

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**

**In the Matter of**

**ROBERT M. KAYE**

**A Director and Controlling Stockholder  
and Former Chief Executive Officer,  
of**

**Metropolitan Bank & Trust Company  
Highland Hills, Ohio  
(OTS No. 06381)**

**Order No.:** NE-03-02

**Dated:** January 31, 2003

**CONSENT CEASE AND DESIST ORDER FOR AFFIRMATIVE RELIEF**

WHEREAS, Robert M. Kaye ("KAYE") has executed a Stipulation and Consent to the Issuance of an Order of Removal and Prohibition and a Cease and Desist Order for Affirmative Relief ("Stipulation"); and

WHEREAS, KAYE, by his execution of the Stipulation, has consented and agreed to the issuance of this Cease and Desist Order For Affirmative Relief ("Order") by the Office of Thrift Supervision ("OTS"), pursuant to 12 U.S.C. § 1818(b).

**NOW THEREFORE, IT IS ORDERED** that:

1. Incorporated herein by reference are the Artwork Agreement entered into between KAYE and Metropolitan Bank & Trust Company ("Metropolitan"), dated October 23, 2002

(the "Artwork Agreement"); and the Voting Agreement entered into between KAYE and the Sky Financial Group, Inc., dated October 23, 2002 (the "Voting Agreement").

2. KAYE shall comply fully with his obligations under the Artwork Agreement and the Voting Agreement, and shall not otherwise take any steps to delay, frustrate or defeat the purposes or goals of said Agreements.

3. If KAYE fails to comply with the Artwork Agreement and the Voting Agreement or either of them, the OTS may in its discretion require KAYE to fulfill his obligations under those Agreements, in addition to imposing on KAYE any other penalties or remedies within the authority of the OTS, including but not limited to the requirement to pay appropriate restitution to Metropolitan or any successor thereto and to impose a civil money penalty on KAYE in accordance with 12 U.S.C. § 1818(i).<sup>1</sup>

4. The Stipulation is made a part hereof and is incorporated herein by this reference.

5. KAYE shall promptly respond to any request from the OTS for documents and/or information that the OTS reasonably requests to demonstrate compliance with this Order.

6. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Order shall remain in effect until terminated,

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<sup>1</sup> The Voting Agreement was entered into based on KAYE'S status as controlling stockholder of Metropolitan Bank & Trust Company and Metropolitan Financial Corp. ("Metropolitan Financial") in contemplation of a merger of Metropolitan Financial into Sky Financial Corp. ("Sky") pursuant to the Agreement and Plan of Merger ("Merger Agreement") dated October 23, 2002 by and between Metropolitan Financial and Sky. If that Merger Agreement is terminated or the merger has not been completed by April 30, 2003, within fourteen days of the earlier of those two events, KAYE must present an acceptable plan to the Regional Director setting forth the steps KAYE will take to terminate his status as controlling stockholder of Metropolitan Bank & Trust and Metropolitan Financial and to address his voting of Metropolitan Financial stock, which plan must be approved by the Regional Director.

modified or suspended, in writing by the OTS, acting through its Director, Regional Director  
or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By:

A handwritten signature in cursive script, appearing to read "Robert C. Albanese", is written over a horizontal line.

Robert C. Albanese  
Northeast Regional Director

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**

<u>In the Matter of</u>	)	
	)	
<b>ROBERT M. KAYE</b>	)	Re: <b>Order No. NE-03-01 and NE-03-02</b>
	)	
<b>A Director and Controlling Stockholder</b>	)	
<b>and Former Chief Executive Officer,</b>	)	<b>Dated: January 31, 2003</b>
<b>of</b>	)	
	)	
<b>Metropolitan Bank and Trust Company,</b>	)	
<b>Highland Hills, Ohio</b>	)	
<b>(OTS No. 06381)</b>	)	

**STIPULATION AND CONSENT TO ISSUANCE  
OF AN ORDER OF REMOVAL AND PROHIBITION  
AND AN ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

**WHEREAS**, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Robert M. Kaye ("**KAYE**"), former Chief Executive Officer, Director and Controlling Stockholder of Metropolitan Bank and Trust Company, Highland Hills, Ohio ("**METROPOLITAN**" or the "Institution") that the OTS is of the opinion that grounds exist to initiate an administrative removal and prohibition and cease and desist proceedings against **KAYE** pursuant to 12 U.S.C. §§ 1818(b) and (e),<sup>1</sup> and

**WHEREAS**, **KAYE** desires to cooperate with the OTS to avoid the time and expense of such administrative proceedings and, without any adjudication on the merits and solely for the

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<sup>1</sup> All references in this Stipulation and Consent to Issuance of an Order of Removal and Prohibition and An Order to Cease and Desist For Affirmative Relief ("Stipulation") and the related Orders are to the United States Code as amended.

purpose of settling this matter in accordance with Rule 408 of the Federal Rules of Evidence, and without admitting or denying that such grounds exist, but only admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

**1. Jurisdiction.**

(a) **METROPOLITAN**, at all times relevant hereto, was a "savings association" within the meaning of 12 U.S.C. § 1813(b), and 12 U.S.C. § 1462(4). Accordingly, **METROPOLITAN** was an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) **KAYE**, as a Chief Executive Officer until July, 2002, and as Director and Controlling Stockholder of **METROPOLITAN** at all times relevant hereto, is an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u).

(c) Pursuant to 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an enforcement proceeding against savings associations' institution-affiliated parties. Therefore, **KAYE** is subject to the authority of the OTS to initiate and maintain administrative removal and prohibition and cease and desist proceedings against him pursuant to 12 U.S.C. §§ 1818(b) and (e).

**2. OTS Findings of Fact.**

The OTS finds that by obtaining reimbursement from **METROPOLITAN** for expenses that were not related to the business of **METROPOLITAN**, and by causing **METROPOLITAN** to purchase large amounts of artwork that did not further the business interests of **METROPOLITAN**, **KAYE** engaged in practices while serving as Chief Executive Officer, Director and Controlling Stockholder of **METROPOLITAN** that satisfy the requirements of 12 U.S.C. § 1818(e)(1)(A)(ii). Furthermore that conduct satisfies the requirements set forth in 12 U.S.C. § 1818(e)(1)(B)(i) and 12 U.S.C. § 1818(e)(1)(C)(ii). **KAYE** desires to cooperate with the OTS, and has voluntarily executed this Stipulation.

**3. Consent.**

**KAYE** consents to the issuance by the OTS of the accompanying Consent Order of

Removal and Prohibition ("R&P Order") and the accompanying Consent Cease and Desist Order For Affirmative Relief ("C&D Order") (both Orders sometimes collectively referred to as "the Orders"). KAYE further agrees to comply with their terms upon issuance and stipulates that the R&P Order and the C&D Order comply with all requirements of law.

**4. Finality.**

The R&P Order and the C&D Order are issued by the OTS under the authority of 12 U.S.C. §§ 1818(e) and (b), respectively. Upon their issuance by the Regional Director or designee for the Northeast Region, OTS, each shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

**5. Waivers.**

KAYE waives the following:

- (a) the right to be served with a written notice of the OTS's charges against him;
- (b) the right to an administrative hearing of the OTS's charges against him; and
- (c) the right to seek judicial review of either the R&P Order or the C&D Order or both, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Orders.

**6. Indemnification.**

KAYE shall neither cause nor permit METROPOLITAN (or any successor institution, holding company, subsidiary, or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional expenses incurred relative to the negotiation and issuance of the Orders. Nor shall KAYE obtain any indemnification (or other reimbursement) from the Institution (or any successor institution, holding company, subsidiary, or service corporation thereof) with respect to such amounts. Any such payments received by or on behalf of KAYE in connection with this action shall be returned to METROPOLITAN (or the successor institution, holding company, subsidiary, or service corporation thereof).

**7. Release: Other Government Actions Not Affected.**

The OTS and KAYE acknowledge and agree that the consent to the issuance of the

Orders is for the purpose of, and shall have the effect of, finally resolving, releasing and discharging any and all actions or causes of action that the OTS has or may have against **KAYE** as of the effective date of the Orders and any and all actions **KAYE** has against the OTS or its Director, as of the effective date of the Orders. **KAYE** acknowledges and agrees that the foregoing release by the OTS does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of **KAYE** that arise pursuant to this action or otherwise, and that may be or have been brought by any other government entity other than the OTS. Nothing in this paragraph in any way releases or affects in any way the OTS' right to take action against **KAYE** to enforce the Orders.

**8. Miscellaneous**

- (a) The construction and validity of this Stipulation and the Orders shall be governed by the laws of the United States of America;
- (b) All references to the OTS in this Stipulation and the Orders shall also mean any of the OTS's predecessors, successors, and assigns;
- (c) The section and paragraph headings in this Stipulation and Orders are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Orders;
- (d) The terms of this Stipulation and Orders represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters; and
- (e) This Stipulation and Orders shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

**WHEREFORE, KAYE** executes this Stipulation and Consent to Issuance of an Order

for Removal and Prohibition and a Cease and Desist Order For Affirmative Relief, intending to be legally bound hereby.

By:

Robert M. Kaye  
Robert M. Kaye.

Accepted by:  
Office of Thrift Supervision

Robert C. Albanese  
Robert C. Albanese  
Northeast Regional Director

Dated: 1/30/03

Dated: January 31, 2003

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#### ACKNOWLEDGMENT

State of New Jersey  
County of monmouth

On this 30<sup>th</sup> day of January, 2003, before me, the undersigned notary public, personally appeared Robert M. Kaye and acknowledged his execution of the foregoing Stipulation and Consent to Issuance of an Order for Removal and Prohibition and a Cease and Desist Order For Affirmative Relief.

Nicole R. Coupland  
Notary Public

My Commission expires:

9/3/04

NICOLE R. COUPLAND  
Notary Public of New Jersey  
My Commission Expires 9/3/2004